EEOICPA BULLETIN NO.02-13

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Subject: Chronic Lymphocytic Leukemia Cases

Background: Section 20 CFR 30.115(a) of the interim final regulations currently provides that the Office of Workers Compensation Programs (OWCP) will refer all non-SEC cancer claims to NIOSH for dose reconstruction before the probability of causation is determined.

On May 2, 2002, the Department of Health and Human Services (HHS) published guidelines (42 CFR 81) OWCP must use to determine the probability of causation for non-SEC cancer claims. Section 81.30 of these guidelines directs OWCP to assign a probability of causation of zero for certain non-radiogenic cancers listed. As of the date of this bulletin, the only non-radiogenic cancer listed by HHS in their guidelines is chronic lymphocytic leukemia (CLL).

Given the HHS guidelines, referring a non-SEC claim for CLL to NIOSH for dose reconstruction serves no useful purpose. Accordingly, an exception to the normal process for determining the probability of causation is needed. The procedures described in this bulletin explain how claims solely for non-radiogenic cancers like CLL are exempt from undergoing a dose reconstruction with NIOSH.

Reference: Interim final regulations 30 CFR 30.115(a) and 42 CFR Parts 81.21 and 81.30.

Purpose: To explain the process for handling Chronic Lymphocytic Leukemia claims.

Applicability: All staff.

Actions:

1. Upon review of a new claim for compensation, the CE should identify any instance where (CLL) has been claimed or identified through the review of medical records.

2. If CLL has been claimed or otherwise been documented in the case file, the CE should undertake appropriate claim development according to established policy and procedure. The evidence of record must be sufficient to establish the necessary medical and employment components for any covered claim under the program.

3. Once steps have been taken to establish a diagnosis of CLL and covered cancer employment, the CE must insert in the case file a letter from NIOSH (Attachment 1). This letter will serve as the dose reconstruction for all instances of CLL.

4. The CE must then assess whether any other covered cancer has been established in the case records.

5. If the CE determines that a diagnosis of CLL exists in conjunction with another type of cancer, a NIOSH referral summary should be prepared. The CE should reference CLL as a diagnosed cancer along with any other cancer established in the case record. The referral summary should then be sent to NIOSH.

6. NIOSH will conduct the dose reconstruction on each cancer aside from CLL and provide the dose reconstruction report. In determining the probability of causation, the CE must apply the results of the dose reconstruction for all established cancers except CLL in the IREP. Given the outcome of the probability of causation calculation, the CE should then prepare a recommended decision including separate findings for each claimed cancer.

The CE should include a finding in the recommended decision that explains that the diagnosis of CLL was valid, but given the HHS published guidelines, it has been assigned a probability of zero and, as such, the condition is denied from coverage under the program. The CE should cite the appropriate regulations pertaining to this finding. In particular, the CE should cite 42 CFR 81.30.

7. If the CE determines that CLL is the sole cancer established, it is not necessary to prepare a NIOSH referral summary or to refer the case record to NIOSH. As NIOSH has identified CLL as a non-radiogenic cancer, a dose reconstruction

is unnecessary. Once this determination is made, the CE should input claim adjudication code "NR" (NIOSH Dose Reconstruction Received) in ECMS. For the IREP Version entry, the CE should list "N/A."

8. The CE should then prepare a recommended decision denying compensation benefits for the reason that per NIOSH regulations, the diagnosis of CLL has a zero probability of causation. The CE should cite the appropriate regulations for this finding in the recommended decision.

9. NIOSH has prepared a list of case files presently undergoing review for dose reconstruction that contain references to CLL. This list will be presented to the District Office (DO) under separate cover. The list identifies claim records where CLL is the sole condition claimed. In addition, it identifies case records that contain some sort of discrepancy concerning CLL. Each DO is to review this list to determine the case records for which they are responsible.

10. If the DO reviews the list and finds a case record where CLL is the only diagnosed condition, a letter is to be prepared to NIOSH. The letter should explain the finding of the DO and advise that a dose reconstruction is unnecessary. NIOSH should also be advised to return all case file records. The DO may then proceed with the issuance of a recommended decision denying benefits given the diagnosis of CLL.

11. If NIOSH has identified a discrepancy in the medical evidence pertaining to a diagnosis of CLL, the DO should examine the case file to determine what corrective action is necessary. In some instances, the CE merely has to ensure that the appropriate ICD-9 code has been applied to a diagnosed CLL. Once this action would be completed, the CE can prepare a letter to NIOSH noting the corrective action taken by the CE and stating whether a dose reconstruction is necessary.

Other discrepancies noted by NIOSH may require additional development of the evidence by the CE. If this is the situation, the CE should prepare a letter to NIOSH advising that no further action on the dose reconstruction should occur until clarification is provided. The CE should then take whatever steps are necessary to resolve the factual or medical discrepancies raised by NIOSH. Once any outstanding issue has been resolved, NIOSH should be advised of the outcome and whether to proceed with a dose reconstruction.

Disposition: Retain until incorporated in the Federal (EEOICPA) Procedure Manual

PETER M. TURCIC
Director, Division of Energy Employees
Occupational Illness Compensation

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